

FILED

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[Signature]
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

BERNARD MATHEW DARDEN

CIV 05-3021

Petitioner,

-VS-

ORDER AND OPINION DENYING
CERTIFICATE OF APPEALABILITY

UNITED STATES OF AMERICA,

Respondent.

TO THE EIGHTH CIRCUIT COURT OF APPEALS:

Petitioner Bernard Mathew Darden filed a motion to vacate, set aside, or correct his conviction and sentence. I summarily dismissed the petition upon initial consideration due to procedural default. Petitioner filed a notice of appeal and request for a certificate of appealability.

Pursuant to 28 U.S.C. § 2253, a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. Petitioner did not and has not made a substantial showing of the denial of a constitutional right.

IT IS HEREBY CERTIFIED that there does not exist probable cause of an appealable issue with respect to the Court's order denying petitioner's motion to vacate, set aside or correct his sentence. The request (Doc. 5) for a certificate of appealability is denied. This in no way hampers the petitioner's ability to request issuance of the certificate by a circuit judge pursuant to Fed. R. App. P. 22.

Dated this 30th day of November, 2005.

BY THE COURT:

[Signature: Charles B. Kornmann]

CHARLES B. KORNMANN
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: *[Signature: Barbara J. Paepke]*
DEPUTY

(SEAL)